

STATE OF WISCONSIN,
Plaintiff,

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

vs.

FEB 6 2007 Case No. 05 CF 381

STEVEN A. AVERY,
Defendant. CLERK OF CIRCUIT COURT

**DECISION AND ORDER ON DEFENDANT'S MOTION
CONCERNING COURTROOM SECURITY**

The defendant has filed a motion asking that the court not permit the use of a stun belt on the defendant during the trial and limiting the number of deputies supervising the defendant during the trial to two. The court will not be in a position to address the "deputies issue" until the court views their positioning in Calumet County. If the defense has any objection to the method of security employed by the Calumet County Sheriff, it will have to be raised again at that time.

While there have been some reported Wisconsin decisions concerning the use of restraints on a defendant during a trial, the court is aware of no such decisions that have specifically addressed the use of a stun belt. As a general rule, trial courts are encouraged to engage in a two-step process before approving the use of physical restraints on a defendant during a jury trial. First, the judge should

perform an independent evaluation of the need to restrain the defendant for security purposes. If restraints are necessary, the judge must take steps to limit any potential prejudicial affect, including consideration of less alternative restrictive measures. (See, Anderson, J. concurrence in *State v. Russ*, 289 Wis. 2d 65, 78 (Ct. App. 2006).

Cases in other jurisdictions that have addressed the issue of restraints list a variety of factors for the trial court to consider in determining the need for restraints. Examples relevant to this case include the severity of the charges, the defendant's temperament and character, the defendant's age and physical characteristics, the defendant's past record, any threats to harm others or create a disturbance, the recommendations of the sheriff, and the adequacy of other security measures.

The court would first note that when some type of physical restraint is required, the court believes a stun belt to be a good and reasonable alternative to other more visible types of restraints. The defendant cites an Indiana state court decision which has banned the use of stun belts in Indiana courtrooms. *Wrinkles v. State*, 798 N.E. 2d 1179 (Ind. 2001). The court believes that *Wrinkles* represents a minority position and that a number of other courts have found the use of a stun belt a highly effective and unobtrusive means of physical restraint where restraints are required. See, e.g., Kansas v. Powell, 56 P.3rd 189 (Kan. 2002). There

apparently have been rare instances in which the belt has accidentally been activated, but that fact alone is not sufficient to outweigh its effectiveness as a security device and nearly invisible appearance. The fact that stun belts are relatively unobtrusive and effective does not alone, however, make their use appropriate in this case. The court must first determine the necessity for any restraints at all.

As the defendant acknowledges, the charges in this case are very significant and a strong reason to consider the use of some type of restraint. The severity of the charges is generally listed as the first criterion for the court to consider, and for good reason. A defendant charged with a serious violent crime may often pose a danger to courtroom security. In the cases from other jurisdictions the court has read, however, restraints have generally only been authorized where there is some tangible indication that the defendant has some demonstrated potential for violence in the courtroom beyond the simple severity of the charges. If there were any other evidence, even indirect, to suggest a potential for courtroom violence in this case, the court would strongly consider ordering the use of a stun belt. The court does not find any such evidence in this case.


The report from Sheriff Pagel indicates that there was a telephone conversation between the defendant and his father in which comments were made about a desire to harm the State's two lead investigators in this case. However,

Sheriff Pagel's testimony demonstrated that the threats came from the defendant's father, not the defendant. The defendant laughed them off without comment. The court heard no evidence to suggest that the defendant has made threats against any of the State's witnesses in this case, either direct or otherwise. The court has not observed any improper behavior from Mr. Avery during these proceedings. Significantly, Mr. Avery was wrongfully convicted of serious charges following a 1985 jury trial, but there is no report that he misbehaved in the courtroom even after receiving a guilty verdict on charges of which we now know he was innocent.

The court concludes that other than the severity of the charges, there is no reason to authorize the use of any type of physical restraint on the defendant in this case during the trial and the court will therefore not order the issuance of any such restraint. There will be two armed deputies nearby as is customary in cases of this type and there is no reason to believe that level of security will not be sufficient.

Dated this 8th day of February, 2007.

BY THE COURT:



Patrick L. Willis,
Circuit Court Judge